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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

MARC JOHN RANDAZZA,

Debtor.

Case No.: BK-S-15-14956-abl
Chapter 11

EXCELSIOR MEDIA CORP., a Nevada
corporation; and LIBERTY MEDIA
HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiffs,

v.

MARC JOHN RANDAZZA, an individual,

Defendant.

Adv. No. 15-01193-abl

**SEPARATE STATEMENT OF
UNDISPUTED FACTS IN SUPPORT
OF MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Date: May 9, 2016
Time: 1:30 p.m.

Defendant, Marc John Randazza (the “Defendant”), by and through his attorneys, the law firm of Larson & Zirzow, LLC, hereby respectfully requests that the Court take judicial notice pursuant to Rule 201 of the Federal Rules of Evidence of the following in support of his *Motion for Partial Summary Judgment* (the “Motion”) [ECF No. 19].¹

¹ Unless otherwise indicated, all capitalized terms herein shall have the same meaning as set forth in the Motion.

NO.	UNDISPUTED FACTS	EVIDENCE
1.	On or about June 10, 2009, Excelsior and Defendant entered into a Contract of Employment for Corporate General Counsel pursuant to which Defendant was hired as General Counsel for Excelsior. The Employment Agreement makes no mention of Defendant acting as general counsel for Liberty.	ECF No. 60-7. <u>See</u> RJN, Ex. 1. ²
2.	Defendant represented Liberty through his law firm, Marc J. Randazza P.A. d/b/a Randazza Legal Group (“ <u>Marc J. Randazza P.A.</u> ”), in litigation against FF Magnat Ltd. d/b/a Oron.com (hereinafter “ <u>Oron</u> ”), wherein a settlement was reached on or about July 1, 2012, but thereafter had to be enforced through a seizure of funds. This same decision also approved the fees charged by Marc J. Randazza P.A.	<u>See</u> RJN, Ex. 2. <u>Liberty Media Holdings, LLC v. FF Magnat Ltd. d/b/a Oron.com</u> , No. 12-01057, 2012 WL 3255044 (D. Nev. Aug. 7, 2012).
3.	Disputes arose between the parties, and Defendant thereafter initiated an arbitration proceeding against Plaintiffs styled as Randazza v. Excelsior Media Corp. <i>et al.</i> , JAMS No. 1260002283 (the “ <u>Arbitration</u> ”). Defendant brought claims in Arbitration for contractual obligations owed by Excelsior per the Employment Agreement, as well as for wrongful termination, and in the alternative, constructive discharge and retaliation. Plaintiffs filed various counterclaims against Defendant in the Arbitration. On or about June 3, 2015, the Arbitrator entered an Interim Arbitration Award (the “ <u>IAA</u> ”) in the Arbitration.	ECF 60-5, Ex. 1. <u>See</u> RJN, Ex. 3.
4.	On June 15, 2015, the Plaintiffs filed a motion in the Eighth Judicial District Court, Clark County, Nevada (the “ <u>Nevada State Court</u> ”), thereby seeking to confirm the IAA and to have judgment entered in their favor and against Defendant (the “ <u>Motion to Confirm</u> ”).	ECF No. 60-6, Ex. 2. <u>See</u> RJN, Ex. 4. <u>Excelsior Media Corp. et al. v. Randazza</u> , Case No. A-15-719901-C, Eighth Judicial District Court, Clark County, Nevada.
5.	On August 7, 2015, Defendant filed his Opposition to Motion to Confirm Arbitration Award and Counter-Motion to Vacate and/or Modify the Interim Arbitration Award in the State Court Action,	<u>See</u> RJN, Ex. 5. <u>Excelsior Media Corp. et al. v. Randazza</u> , Case No. A-15-719901-C, Eighth Judicial District Court, Clark County, Nevada.

² All references to the “RJN” means the *Request for Judicial Notice* filed in support of the Motion

NO.	UNDISPUTED FACTS	EVIDENCE
6.	The IAA was an interim award only, and has never been reviewed or confirmed by any court, and no judgment has ever been entered thereon.	See RJN, Ex. 6 (docket from <u>Excelsior Media Corp. et al. v. Randazza</u> , Case No. A-15-719901-C, Eighth Judicial District Court, Clark County, Nevada).
7.	On August 28, 2015, the Defendant filed his voluntary petition for relief under chapter 11 of title 11 of the United States Code, thereby commencing his bankruptcy case (the " <u>Chapter 11 Case</u> "). The filing of the Chapter 11 Case acted to stay the State Court Action by operation of the automatic stay.	ECF No. 1. ³
8.	On October 28, 2015, the Plaintiffs filed their <i>Motion to Modify the Automatic Stay to Allow a Pre-Petition Arbitration to Proceed to Judgment</i> (the " <u>Stay Relief Motion</u> "), which the Court denied by order entered on December 18, 2015.	ECF Nos. 60 and 93.
9.	On November 30, 2015, the Plaintiffs filed their original complaint against the Defendant asserting claims for nondischargeability pursuant to sections 523(a)(2) and (a)(4) of the Bankruptcy Code, but never served it.	ECF No. 83.
10.	On December 29, 2015, Excelsior filed a Proof of Claim (the " <u>Proof of Claim</u> ") in the stated amount of "in excess of \$1,552,614.29." Liberty did not file its own separate proof of claim, but is listed as "another name the creditor used with the debtor" in Excelsior's Proof of Claim.	Claim No. 8.
11.	On January 22, 2016, the Plaintiffs filed a <i>Notice of Appeal</i> from this Court's Denial of Stay Relief Order, however, the appeal was dismissed by order entered on February 24, 2016.	ECF Nos. 99 and 122.
12.	On February 10, 2016, Plaintiffs filed their First Amended Complaint, thereby asserting claims pursuant to not only sections 523(a)(2) and (a)(4), but also pursuant to section 523(a)(6) of the Bankruptcy Code.	ECF No. 120.

³ All references to an "ECF No." are to the docket in the Defendant's underlying bankruptcy case.

1 Dated: March 16, 2016.

2 LARSON & ZIRZOW, LLC

3
4 By: 

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